

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION

UNITED STATES OF AMERICA)	
)	DOCKET NO. 5:15CR15-RLV
v.)	
)	FACTUAL BASIS
(2) MICHAEL FLUCKIGER)	
_____)	

NOW COMES the United States of America, by and through Jill Westmoreland Rose, United States Attorney for the Western District of North Carolina, and hereby files this Factual Basis in support of the plea agreement filed simultaneously in this matter.

This Factual Basis does not attempt to set forth all of the facts known to the United States at this time. This Factual Basis is not a statement of the defendant, and, at this time, the defendant may not have provided information to the United States about the offenses to which the defendant is pleading guilty, or the defendant's relevant conduct, if any.

By their signatures below, the parties expressly agree that there is a factual basis for the guilty plea(s) that the defendant will tender pursuant to the plea agreement. The parties also agree that this Factual Basis may, but need not, be used by the United States Probation Office and the Court in determining the applicable advisory guideline range under the *United States Sentencing Guidelines* or the appropriate sentence under 18 U.S.C. § 3553(a). The defendant agrees not to object to any fact set forth below being used by the Court or the United States Probation Office to determine the applicable advisory guideline range or the appropriate sentence under 18 U.S.C. § 3553(a) unless the defendant's right to object to such particular fact is explicitly reserved below. The parties' agreement does not preclude either party from hereafter presenting the Court with additional facts which do not contradict facts to which the parties have agreed not to object and which are relevant to the Court's guideline computations, to 18 U.S.C. § 3553 factors, or to the Court's overall sentencing decision.

1. The defendant, Michael Fluckiger (hereinafter referred to as "Fluckiger"), along with Steven Chase – aka [REDACTED], and David Lynn Browning – aka [REDACTED] operated a website dedicated to the advertising and distribution of child pornography between August 19, 2014 and March 4, 2015. The website had three administrators, including Fluckiger, and numerous moderators. The computer server hosting the site was located in Lenoir, North Carolina. Fluckiger administered the website from his residence in Portland, Indiana.
2. Users were required to log on with an existing account or register a new account in order to access the website. The website was divided into forum groups, each dedicated to a specific topic, all of which relate to child exploitation and the trading of sexually explicit images of children. Forum group topics included – [REDACTED]

██████████" "██████████" and "██████████" Users posted text, images, and video files that could be accessed and downloaded by other users. For example, a review of the ██████████ forum showed 150 threads/topics, which included a total of 1,749 posts/replies. Many of the threads included images of child pornography depicting infant and toddler-aged children posed to expose their genitals or being subjected to sexually explicit conduct by adults. Examples of threads in the ██████████ forum include:

- a. On February 3, 2015, the user ██████████ posted a topic entitled ██████████ in the forum ██████████ that contained numerous images depicting CP of a prepubescent or early pubescent female. One of these images depicted the female being orally penetrated by the penis of a naked male.
 - b. On January 30, 2015, the user ██████████ posted a topic entitled ██████████ in the forum ██████████ that contained hundreds of images depicting CP of a prepubescent female. One of the images depicted the child being orally penetrated by the penis of a male.
 - c. On September 16, 2014, the user ██████████ posted a topic entitled ██████████ in the ██████████ forum that contained four images depicting CP of a prepubescent female and a hyperlink to an external website that contained a video file depicting what appeared to be the same prepubescent female. Among other things, the video depicted the prepubescent female, who was naked from the waist down with her vagina and anus exposed, lying or sitting on top of a naked adult male, whose penis was penetrating her anus.
3. The website also had an "Administration" section or forum that was accessible only to the Administrators and Moderators where they could communicate about the website. As an Administrator, Fluckiger handled the technical needs of the website which included managing membership, developing and enforcing the rules of the site, and other tasks. Examples of administrative actions taken by Fluckiger include:
- a. On August 26, 2014, Fluckiger sent a private message to a user of ██████████ that stated, "I removed your links from your post due to an unsafe file host..."
 - b. On September 1, 2014, Fluckiger sent a private message to Chase, another administrator, that recommended that a specific user on the website be promoted to the status of moderator on ██████████. Fluckiger stated that the individual was already a moderator of another website whose purpose was the advertisement and distribution of child pornography.

- c. On January 19, 2015, Fluckiger created a post titled, [REDACTED] in the Administration forum. In the post, Fluckiger stated, "...I have had a request for us to have a Producers/Original Content Board...The plus side to this is that we may get some new content...[The website] may also become an even bigger target for LEA¹...Anyone have any thoughts or recommendations about this?"
 - d. On February 13, 2015, Fluckiger created a post titled, [REDACTED] Fluckiger stated that members accessing the producers-only section must follow all existing website rules. Further, Fluckiger stated that members in the producers-only section must not be disrespectful or complain about the quality of newly produced material. In the producers-only section, Fluckiger posted a link to the original forum rules, which require encryption when sharing material on the website.
- 4. Fluckiger made 185 posts to the website as of February 28, 2015. He was most active in the board categories: [REDACTED] and [REDACTED] with 60 and 30 posts in those categories respectively. Fluckiger also created and replied to threads on the website which contained child pornography images on at least three occasions.
 - 5. On February 3, 2015, Fluckiger created a thread that contained a set of 8 images that depicted a prepubescent female wearing fishnet stockings and sleeves. In one image the prepubescent female is depicted laying on a bed with her legs in the air. The image is focused on her nude genitals and anus. Another image depicts the prepubescent female kneeling on the bed. The image focused on her nude genitals and anus from behind. The other six images depict the prepubescent female laying on the bed in various poses with her genitals or buttocks visible. On December 23, 2014, Fluckiger posted a response that contained a set of 12 images that depicted a prepubescent female, who appeared to be under 12 years of age, in various states of undress. In six of the images, the penis of an adult male can be seen partially penetrating the vagina of the prepubescent female. The last two images depict what appears to be semen on or around the stomach and vagina of the prepubescent female. On November 19, 2014, Fluckiger created a thread that contained a set of 16 images that depicted a prepubescent female, who was nude from the waist down. In several images the prepubescent female is depicted inserting a red dildo into her vagina.
 - 6. Further, the website was technically designed to facilitate anonymous communication by users. Only a user who had installed special software on the user's computer could access the website. That software enabled the communications of website users to be routed through multiple computers in order to prevent communications from being traced back to the users. Thus, the defendant and the users of the website believed they were operating in complete anonymity. The website contained a total

¹ "LEA" is known to be an acronym for "Law Enforcement Agency".

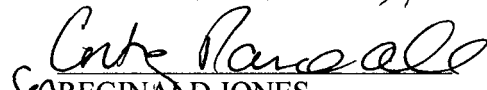
of 117,773 posts, 10,622 total topics, and 214,898 user accounts at the time it was shut down. Approximately 50,000 of images and videos of child pornography were distributed via the website.

7. According to the National Center for Missing and Exploited Children ("NCMEC"), the images and videos distributed via the website included at least 283 identified child victims.
8. On March 4, 2015, Fluckiger was interviewed by special agents with the Federal Bureau of Investigation. Fluckiger admitted to being the administrator on the website. He told agents that they would find a significant amount of child pornography on his computer and an external hard drive. Over 3,000 images and videos of child pornography were located on the defendant's computer and hard drive. The defendant also admitted to molesting multiple female minors in approximately 1991.

JILL WESTMORELAND ROSE
UNITED STATES ATTORNEY



CORTNEY RANDELL

ASSISTANT UNITED STATES ATTORNEY


REGINALD JONES
TRIAL ATTORNEY

Defendant's Counsel's Signature and Acknowledgment

I have read this Factual Basis, the Bill of Indictment, and the plea agreement in this case, and have discussed them with the defendant. Based on those discussions, I am satisfied that the defendant understands the Factual Basis, the Bill of Indictment, and the plea agreement. I hereby certify that the defendant does not dispute this Factual Basis with the exception of those facts to which I have specifically reserved the right to object, and understands that it may be used for the purposes stated above.


Matthew Pruden, Attorney for Defendant

DATED: 11/12/15